

## **IC 14-26**

### **ARTICLE 26. LAKES AND RESERVOIRS**

#### **IC 14-26-1**

##### **Chapter 1. Reservoirs; Land Acquisition and Creation**

#### **IC 14-26-1-1**

##### **Legislative findings regarding need for reservoir sites**

Sec. 1. (a) It is recognized that the growth and spread of urban development and highways is encroaching upon and often eliminating many open areas that are suitable for reservoirs needed for water supply storage in the near future. Because of the varied topography and the geological differences that exist in the subsurface, there are a limited number of desirable reservoir sites in Indiana. There is an increasing demand for water supply storage to be used for the following purposes:

- (1) Domestic use.
- (2) Municipal use.
- (3) Commercial use.
- (4) Industrial use.
- (5) Agricultural use, including irrigation.
- (6) Recreational use.
- (7) Sewage dilution.
- (8) Pollution abatement.
- (9) General health purposes.
- (10) Power.
- (11) Transportation.
- (12) Maintenance of desirable levels of stream flow.
- (13) Flood prevention and control.

(b) Therefore, it is the duty of the general assembly to provide both for the immediate and future needs of the people of Indiana. The general assembly is providing the means through this chapter by which the state, municipalities, special taxing districts, and public utilities may secure needed reservoir sites to meet both the present and the future needs for storage of water even though there may be no present, immediate need.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-2**

##### **Legislative findings regarding regulation of flow of rivers and waters**

Sec. 2. (a) The unregulated flow of the rivers and water of Indiana results in periods of destructive floods upsetting the orderly processes of industry, agriculture, commerce, and life in general and causing loss of life and property. The unregulated flow results in periods of inadequate water flow during which municipal, industrial, and agricultural water supplies are made inadequate and the propagation of fish and wildlife is adversely affected.

(b) This unregulated flow is a menace to the general welfare and economy of the people of Indiana. The regulation of the flow of the

rivers and water of Indiana is a proper activity of the state, independently or in cooperation with the United States, an agency of the United States, or a political subdivision of the state.

(c) The state should improve or participate in the improvement of the rivers and water of Indiana to regulate the flood and low water flow of the rivers and water and so that the lives and general welfare of the people of Indiana are protected and enhanced.

*As added by P.L.1-1995, SEC.19.*

### **IC 14-26-1-3**

#### **Public purpose**

Sec. 3. Storage reservoirs providing for the regulation of the flow of the rivers and water of Indiana in the interest of:

(1) flood control, water supply for all beneficial purposes, water quality control, navigation, and both general and fish and wildlife recreation; or

(2) any feasible combination of the purposes described in subdivision (1);

are in the public interest and contribute to the general economy, welfare, public health, and safety of the people of Indiana.

*As added by P.L.1-1995, SEC.19.*

### **IC 14-26-1-4**

#### **Purchase or condemnation of land by commission**

Sec. 4. The commission may do the following:

(1) Act on behalf of the state under this chapter.

(2) Purchase or condemn easements or fee simple interests, as provided in this chapter, in land necessary for reservoirs for storage of water to be used for:

(A) any;

(B) a combination of any; or

(C) all;

purposes stated in section 1 of this chapter.

(3) Construct and otherwise develop necessary structures for impoundment of water on sites acquired for reservoirs. If the impoundment inundates or otherwise physically affects properties under the jurisdiction of any other commission or department of the state, the commission shall secure the consent of the other commission or department before proceeding with the impoundment.

*As added by P.L.1-1995, SEC.19.*

### **IC 14-26-1-5**

#### **Purchase or condemnation of land on behalf of public entity with right or duty to supply or store water**

Sec. 5. The commission, on behalf of the state, or a municipality, special taxing district, or public utility that by other law has the right or duty to supply or store water for any of the purposes stated in section 1 of this chapter may do the following:

(1) Purchase the fee simple interest in land or easements over, upon, and across land for the purpose of flooding, inundation, and

storage of water necessary to water supply to be used for any of the purposes stated in section 1 of this chapter.

(2) Condemn and take the fee simple interest or easement if a reservoir for water supply storage is considered to be necessary at any time within twenty (20) years after the date of the taking.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-6**

##### **Statement regarding condemnation of property; valuation**

Sec. 6. (a) If an agreement cannot be reached by the owner of the land considered needed for the reservoir site and the taker that is authorized to condemn the site by section 5 of this chapter, the taker must set forth the following:

(1) The interest to be taken in the land.

(2) The earliest date on which the taker intends to store water or to start construction to create a reservoir impoundment for the purposes set forth in section 1 of this chapter.

(b) The appraisers appointed by the court in the condemnation proceedings shall value the interest to be taken accordingly, giving due consideration to the fact that the owner of the land has use of the land, subject to the terms of the interest sought to be taken, until the date upon which the land may be inundated according to the terms of the complaint. In arriving at the proper valuation to be paid the owner of the land for the easement or the interest in fee to be taken or purchased, the landowner is considered to own the land for a term of years ending with the date set out in the complaint. The interest taken shall be valued as a remainder interest after that term of years.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-7**

##### **Cost of easement or interest in land**

Sec. 7. The cost of an easement or interest in the fee, either purchased or condemned, for present or for future needs, is considered to be the cost of used and useful property commencing with the date the payment for the land or an interest in the land is made. The Indiana utility regulatory commission shall take due note of the fact that a fee simple interest or easement, however acquired, is used and useful property in a rate making proceeding in which a utility owning a fee simple interest or easement is involved.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-8**

##### **Rights of owners from whom easements or remainder interests taken**

Sec. 8. (a) The owner of the land from which:

(1) an easement is taken; or

(2) the remainder interest in fee simple is taken;

may use and enjoy the land in any way consistent with the rights of the holder of the easement or remainder interest in fee simple.

(b) The owner may use the land for agricultural, recreational, or other purposes, but the use is subject to the dominant purpose of

storage of water.

(c) If:

- (1) any improvements are placed on the land after the land is taken or purchased for a reservoir site, either by the taking or purchase of an easement or a fee after a fixed term of years; and
- (2) the improvements interfere with the use of the land for any of the purposes of storage of water;

when the land is used for storage of water, the improvements may be removed without compensation and at the expense of the person who held the land subject to the remainder easement or fee.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-9**

##### **Approval of complaint for condemnation**

Sec. 9. A complaint for condemnation, other than by the commission, under this chapter may not be filed in a court unless the taker has received approval from both the department and the department of environmental management. These agencies shall give approval only if the agencies find the following:

- (1) That based on sound engineering principles, the site is satisfactory for water supply storage.
- (2) That there is a probable future need for water supply storage that can be served from the reservoir site.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-10**

##### **Source of money for commission**

Sec. 10. (a) The commission shall, when acting on behalf of the state under this chapter, derive the needed money for purchase or taking and for construction of necessary structures for impoundment from either or both of the following:

- (1) The water resources development fund created by IC 14-25-2-4.
- (2) Appropriations that the general assembly makes available to the commission for these purposes.

(b) The income derived to the commission from:

- (1) the sale of water from impoundments; or
- (2) payments made by persons or corporations, private or public, who have contracted with the commission for the maintenance by the commission of certain minimum quantities of stream flow;

shall be deposited in the water resources development fund.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-1-11**

##### **Cooperation with federal government not authorized**

Sec. 11. (a) This section applies to the following multipurpose reservoirs that have been authorized for construction by the United States Congress:

- (1) Big Blue.
- (2) Big Pine.
- (3) Big Walnut.

(4) Clifty Creek.

(5) Lafayette.

(b) Notwithstanding Acts 1967, c.100, s.3, Acts 1969, c.434, s.3, and Acts 1969, c.434, s.4, the department may not:

(1) cooperate with the United States or an agency of the United States in the planning, construction, operation, or maintenance of;

(2) enter into, on behalf of the state, an agreement with the United States or an agency of the United States relating to; or

(3) pay a share of the costs for water supply or recreation of; a reservoir subject to this section.

*As added by P.L.1-1995, SEC.19.*

## **IC 14-26-1-12**

### **Cooperation with federal government authorized**

Sec. 12. (a) The department shall cooperate with the United States and the appropriate agencies of the United States in the planning, construction, operation, and maintenance of:

(1) the Downeyville multiple purpose reservoir, which has been authorized for construction by the Congress of the United States; and

(2) the Richland Creek reservoir in Greene County if the construction of the Richland Creek reservoir is authorized by Congress.

(b) The department may, on behalf of the state and subject to the approval of the governor, enter into agreements with the United States or agencies of the United States necessary to do the following:

(1) Fully effectuate the authorized purposes and functions of the reservoirs.

(2) Pay a share of the costs of the reservoirs for the purposes of water supply and recreation.

(c) The state's share of the costs:

(1) must be computed on the basis of the laws of the United States pertaining to multiple purpose reservoir projects; and

(2) must be requested by the department in the regular biennial budget requests.

*As added by P.L.1-1995, SEC.19.*